It is easy, however, to understand why in many cases recovery could not be allowed for false statements of opinion. The difficulty lies in proving one of the essential elements of the cause of action, the *scienter*, or fraudulent intent. To establish this point it is necessary to show that the defendant did not have an honest belief in the truth of his representations.[2] Where they consist of matter of fact, proof of their actual falsity is practically sufficient, but in case they were made as expression of opinion, it is necessary to prove that the defendant did not really have that opinion, to do which is obviously difficult. Another difficulty is that of proving reliance upon the statement of opinion by the party injured. This is particularly true in the case of "seller's talk" which consists largely in statements of opinion. Upon these grounds it may be urged that injustice might frequently be done by submitting such cases to a jury, which would often find fraud where there was none.

The cases plainly show, however, that the rule, though it doubtless exists, is often disregarded. Thus, where statements of opinion are made as resting upon knowledge,[3] or where the means of forming a correct opinion are within the reach of one party only,[4] the courts allow recovery. Even in cases of statement of value[5] and representation as to law,[6] where the rule is usually regarded as without exception, a defendant has been held liable by some courts when his moral obliquity was clearly made out to have been the cause of the plaintiff s injury. Further, the courts frequently avoid the rule by finding in a statement of opinion some implied representation of fact. A recent New Hampshire case is an example. A Christian Science "healer" represented to a patient suffering with appendicitis that he could cure her by Christian Science treatment, and that she did not need a surgical operation. The court followed previous New Hampshire decisions in holding that it should have been left to the jury to say whether there was not some representation of fact for which the defendant could be held liable. *Speed* v. *Tomlinson*, N. H. Sup. Ct., Oct. 6, 1903.

This is virtually submitting to them the real questions at issue, namely, the fraudulent intent of the defendant and the reliance of the plaintiff. In view of the fact that in almost no cases will the rule under consideration stand in the way of recovery by an injured party, when all the essential elements of a cause of action are present, it would seem that the rule itself is of little value.

PARTNERSHIP ASSOCIATIONS AS PARTIES TO ACTIONS. — Legislatures can of course create corporations which are recognized everywhere as legal entities. Whether similar entities are created when the legislature of a state confers the power of suing and being sued in an artificial name on other combinations of individuals, lacking some essential of a corporation, such as partnership associations, is an interesting question. If these statutes merely prescribe rules of procedure, it follows that they are of no force outside the state where passed. This is the view taken in Massachusetts.[1] A

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[2] Derry *v.* Peek, 14 App. Cas. 337, 374.
[3] Cabot *v.* Christie, 42 Vt. 121.
[4] Hedin *v.* Minneapolis Med. & Surg. Inst., 62 Minn. 146.
[5] Bacon *v.* Frisbie, 15 Hun (N. Y.) 26.
[6] Townsend *v.* Cowles, 31 Ala. 428.

[1] Edwards *v.* Warren, etc., Works, 168 Mass. 564.

recent federal decision, however, treats such statutes as creating artificial persons which, like corporations, should be regarded as proper parties to actions even in other jurisdictions. *Sanitas Nut Food Co.* v. *Force Food Co.*, 124 Fed. Rep. 302 (Circ. Ct., W. D. N. Y.). Beyond these decisions practically no cases upon the point have been found. The United States Supreme Court cases[2] which refuse, in determining jurisdiction over partnership associations, to apply the familiar presumption as to citizenship of members of corporations, are not in point, since that court considered corporations legal entities before that presumption arose.[3] In point of fact, courts usually avoid the difficulty by finding that the organization, though called by another name, is in fact a corporation.[4]

The Massachusetts court[5] rightly laid it down as law that if the statute merely created a remedy it should have no extra-territorial effect, while if a right were created the action should be permitted in other jurisdictions. If it is a matter of remedy, the association name must be used merely as a symbol representing the name of each individual member, and the only rights involved must be individual rights which might have been determined by actions in the individual names. If it is a matter of right, however, that right must exist in or against an artificial entity distinct from the members who compose it. The name used must represent a new-born artificial person, and must not be a rechristening of natural persons. Even Massachusetts admits, in the case of corporations, that rights against such an entity are new rights, distinct from rights against the individuals composing it. The question is thus reduced to this: are partnership associations a new form of artificial person?

Corporations were for years the only artificial persons given a place in the courts, but there is no inherent reason why legislatures should not be able to create new forms of legal entities. England, by the Taff Vale decision, has recognized that such beings may exist. The House of Lords, without statutory authority, allowed a suit against an anomalous legal entity, an unincorporated trade union.[6] This view might equally well be held as to partnership associations. To say that the partnership association name is but another name for a natural person does not accord with the fact. No single individual could be brought into court by the use of the association name. A further indication that the association and not the individual is the party to the record, is that execution will only run against association property.

In addition to this technical argument, there is a strong argument of practical necessity in favor of this view. These associations are frequently composed of several thousand persons who are scattered over wide areas. If a man possessing a right against such an association is to have any substantial relief it must be given against the association. This argument had very great weight in the Taff Vale case. Ascribing a legal entity to a body of men is a fiction, but it is a useful fiction that very closely represents the facts as conceived by the modern business world. The law should possess the power of growth, and when required by industrial development, should recognize new kinds of artificial persons.

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[2] Great Southern Co. *v.* Jones, 177 U. S. 449.
[3] Bank of the United States *v.* Deveaux, 5 Cranch (U. S.) 61.
[4] Edgeworth *v.* Wood, 58 N. J. Law 463.
[5] Edwards *v.* Warren, etc., Works, *supra*.
[6] Taff Vale Ry. Co. *v.* Amalgamated Society, [1901] A. C. 426.